IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 4 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAMNAGAR MAHANAGARPALIKA - Appellant(s)
Versus
GULABRAI GORDHANDAS VAJANI - Defendant(s)

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Appearance :
MR AR THACKER for Appellant(s) : 1,
MR HASIT H JOSHI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 01/03/2007

ORAL JUDGMENT

1. Heard Mr.A.R. Thacker, learned counsel for the appellant and Mr.Hasit H.Joshi, learned counsel for the respondent.

2. The appeal has been admitted for hearing the parties on the following substantial questions of law;

> "(i) Whether on the facts and in the circumstances of the case, the first appellate court was justified in holding that as the inquiry report was not supplied to the plaintiff, proceedings were vitiated and no punishment could be awarded to the plaintiff?
>
> (ii) Whether on the facts and in the circumstances of the case, the first appellate court was justified in reconsidering the evidence which was produced before the inquiry/disciplinary authority and could the Civil Court record a finding that the material was falling short to record a finding of guilt against the delinquent officer/plaintiff?"

3. Short facts necessary for disposal of the present matter are that the respondent was working as a City Surveyor in Jamnagar, while he was holding the office, he added name of Jamal Ismail after striking name of Bhagvanjibhai Harji in rent demand register. The plaintiff was chargesheeted, he was given appropriate opportunity in the said inquiry, findings were obtained from the inquiry officer, who, in his inquiry report held the plaintiff guilty of the misconduct and observed that the plaintiff was liable to be punished. On 25/8/1981,

punishment of stoppage of one increment for a period of one year, was awarded with a further direction that the period of suspension between 1/5/1980 and 1/7/1981 would be taken to be on leave.

4. Challenging the said order, the plaintiff filed Civil Suit No.858 of 1982 submitting inter-alia that he was not supplied the copy of the inquiry report and appropriate opportunity was not afforded to him.

5. The defendant / appellant – Jamnagar Mahanagar Palika appeared in the matter and contested the suit. The trial court dismissed the suit.

6. On an appeal, the same was allowed, therefore, the appellant is before this Court.

7. The appellate court has held that the copy of the inquiry report was not supplied to the plaintiff which would vitiate the proceedings, as non-supply itself had caused serious prejudice to the plaintiff, specially when the disciplinary authority had passed the order of punishment solely on the basis of inquiry report. The appellate Court also held that the evidence was not properly appreciated by the inquiry / disciplinary authority and as such, the inquiry report could not be relied upon, it accordingly quashed / set aside the order of punishment.

8. Mr.A.R. Thacker, learned counsel for the appellant submits that from the judgment of the Supreme Court in the matter Union of India Vs. Mohd.Ramzan Khan, reported in AIR 1991, SC 471, it would clearly appear that non-supply of the copy of the inquiry report would amount to an illegality, but the said judgment, according to the Supreme Court, would have a prospective application and no punishment imposed earlier shall be open to challenge on the ground that the inquiry report was not supplied.

9. The said judgment of the Supreme Court came to be explained by yet another Bench of Supreme Court in the matter of Managing Director ECIL, Hyderabad and others Vs. B.Karanakar, reported in A.I.R. 1994 S.C. 1074, there the Supreme Court has observed that copy must be supplied. In the said case, the Supreme Court held that on facts, no relief could be given to the appellant in case of Mohd.Ramzan Khan, but however, it approved the observations made by the earlier Bench of the Supreme Court.

10. Mr.Thacker submits that in the present matter, inquiry concluded in the year 1981 and punishment was awarded immediately, therefore, even if the inquiry

report was not supplied to the plaintiff, the same was not going to vitiate the final outcome. He also submits that the appellate court could not act as an appellate authority of the disciplinary authority nor could it enter into the question of facts which were to be decided by the disciplinary authority. He submits that the judgment of the tribunal or disciplinary authority can never be interfered with by Civil Court unless it is shown to the court that the order is patently illegal, it runs contrary to law, the provisions of law have not been observed and principles of natural justice were not followed.

11. Mr.Hasit Joshi, learned counsel for the respondent submits that from the case of Mohd.Ramzan Khan, it would clearly appear that non-supply of the inquiry report would vitiate the proceedings and from the facts, it would also appear that the appellate court was justified in interfering with the findings recorded by the inquiry officer and the disciplinary authority.

12. In the matter of Mohd.Ramzan Khan, the Supreme Court in para 17 has observed as under;-

> “17. There have been several decisions in different High Courts which, following the Forty-Second Amendment, have taken the

> view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a coordinate or a larger Bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two-Judge Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground.

13. An inquiry report must be supplied to the delinquent so that he can make an effective representation and explain as to what was found against him. While laying down the said law, the Supreme Court observed that any conclusion contrary to Their Lordships conclusion by any two Judges Bench of the Supreme Court would not be taken tobe good law. The Supreme Court observed that Their Judgment shall have prospective application and no punishment imposed shall be open to challenge on that ground. If that was the final judgment of the Supreme Court, then, it cannot be argued that non-supply of the

inquiry report in 1981 before declaration of law by the Supreme Court in the case of Mohd.Ramzan Khan, would be a bad action. In any case, Ramzan Khan's case would also not help the plaintiff, because that has prospective application and in the present case, the matter before the disciplinary authority came to an end in the year 1981.

14. So far as the jurisdiction of the Civil Court to reappreciate the evidence brought before the inquiry officer or disciplinary authority is concerned, it is settled by catena of judgments that civil court or even High Court in its writ jurisdiction cannot reappreciate the evidence. The High Court can exercise its powers of superintendence and interfere with the findings, if the same are perverse and even in such case, High Court cannot quash the proceedings of the inquiry, but it will have to remit the matter back to the disciplinary authority or the appellate authority to re-decide the matter in accordance with law and the observations made by the High Court.

15. In the present case, in the opinion of this Court, the appellate court was not justified in holding that non-supply of the inquiry report vitiated the proceedings and non-supply of the report itself was a prejudice to the

plaintiff.

16. The learned first appellate court, in the opinion of this Court, was not justified in interfering with the matter.

17. The judgment and decree passed by the learned first appellate court deserve to and are accordingly set aside and that of the trial court dismissing the suit, are restored. The appeal is allowed. No costs. Let a decree be framed accordingly.

(R.S. GARG, J.)

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